exercise of his discretion cured the irregularity and validated the service. There was no question of an extension of the validity of the writ which would deprive the defendants of the defence of limitation. The writ was taken out within the period of the validity of the writ. This clearly is the significant difference between the instant case and *Leal's* case.

In the result, the appeal failed, and I so held.

Appeal dismissed.

Solicitors: *Drew & Napier; Haridass Ho & Partners.*

BRUNEI REPORTS

HJ. MANAN BIN HJ. MD. RAIS v. LOO KOK KIONG & ORS.

[A.C.J. (Mayo J.) 13 April 1988]

[Bandar Seri Begawan – Suit No. 229 of 1987]

Tort – Negligence – Road accident – Finance company – Whether can be sued – Road Traffic Act (Cap. 68), ss. 2 & 86.

In this road accident case, the plaintiff claimed damages against the first defendant, the driver of one of the vehicles involved, the second defendant, the owner thereof under a hire-purchase agreement, and the third defendant, the finance company.

The issue in this case was whether the plaintiff can sue the third defendant, the finance company, under section 86 of the Road Traffic Act (Cap. 68).

Held: (1) section 2 of the Road Traffic Act specifically excludes finance companies from the definition of ownership and there is nothing in section 86 which persuaded the court that it was the intention of the legislature to include finance companies, that is, to include finance companies within the purview of section 86;

(2) section 86 does not extend to finance companies such as the third defendant and it was not even arguable that this is the case.

APPEAL AGAINST REGISTRAR'S DECISION.

Andrew Ong for the plaintiff.

Ronnie Lee for the third defendant.

Cur. Adv. Vult.

Mayo J.: This is an appeal against the order of Registrar Swed. It is a strike out application. The plaintiff, who was seriously injured in a traffic accident, has sued the first defendant, the driver of one of the vehicles involved, the second defendant, the owner thereof under a hire-purchase agreement, and the third defendant, the finance company.

Mr. Lee for the third defendant submits that there is no cause of action against his client or alternatively that such cause is frivolous, vexatious and an abuse of the process of the court.

The plaintiff's claim against the third defendant is based upon the provisions contained in section 86 of the Road Traffic Act (Cap. 68). This provides:

"In addition to any liability imposed by the common law upon the owner of a motor vehicle for any injury or damage that may be caused by, or by reason of the use of,

such motor vehicle such owner shall be liable for any injury or damage caused by any accident which occurs through the negligent driving of such motor vehicle by any person employed by him as a driver of such motor vehicle when not acting within the scope of his employment, or by any other person permitted by him to drive such vehicle, or by any person deputed or permitted by such driver or other person to drive such motor vehicle.

Provided that no proceedings shall lie against an owner by virtue of this section unless the act or omission complained of would apart from this section have given rise to proceedings in tort against the person employed by such owner and that in any such proceedings such owner may avail himself of any defence and any right to require reduction of damages because of the plaintiff's share of responsibility therefor as would have been available to the person employed by such owner;

Provided also that this provision shall not exempt from liability any other person who at common law is also liable for such injury or damage.

In this section 'owner' includes the registered owner and the person in whom the property in the motor vehicle is vested."

Mr. Lee submitted that this section had no application to finance companies. As authority for this, he referred to the definition section of the said Act, section 2, which defines "owner" as follows:

" 'owner' means the person in whose name a motor vehicle is registered by a licensing officer:

Provided that in the case of a vehicle which is the subject of a hire-purchase agreement the term means the person in possession of the vehicle under that agreement;"

Mr. Ong for the plaintiff argued that there was a conflict between section 2 and section 86 and that the latter section, the purpose of which was to extend liability for owners, should prevail over section 2. It was clear from section 86 that the legal owner of a vehicle was liable under the section.

With some regret, I am unable to accept this contention. I see no conflict between the provisions contained in section 2 and section 86.

Section 2 specifically excludes finance companies from the definition of ownership and there is nothing in section 86 which persuades me that it was the intention of the legislature to include finance companies, that is, to include finance companies within the purview of section 86.

I say that I come to this conclusion with regret because it is evident from an affidavit which was placed before me that the defendant's insurers are now insolvent and unless redress can be obtained against the third defendant, the plaintiff has little prospect of recovering any damages for the injuries he has sustained.

In my view, the legislation is quite clear. Section 86 does not extend to finance companies such as the third defendant and it is not even arguable that this is the case. I have therefore come to the conclusion that this appeal must succeed. The relief sought in the third defendant's original summons before Registrar Swed will be allowed.

I will hear the parties on costs.

Appeal allowed.

Solicitors: *Choo Chan & Wong; Ibrahim Chee & Co.*

DSD DILLINGER STAHLBAU GMBH v. ANNIE CHONG & ANOR.

[O.C.J. (Roberts C.J.) 20 & 22 February 1988]

[Bandar Seri Begawan – Civil Suits Nos. 195 of 1985 & 413 of 1986]

Contract – Payment made by plaintiffs to Inland Revenue Department – Claim from defendants.

Conflict of laws – Revenue law – Attempt to enforce in Brunei the revenue laws of another country – Whether sustainable.

The plaintiffs were carrying out work in Labuan at the methanol and power plants. The defendants agreed by an agreement, which both parties said in evidence was entirely oral, to supply labour at rates agreed with the plaintiffs for use by the latter at the methanol and power plants.

During the progress of the agreement, the plaintiffs made certain payments to the defendants. Thereafter, the Inland Revenue Department of Malaysia sought to recover from the plaintiffs 20% of the sums which the plaintiffs had paid to the defendants for the supply of labour. This sum was paid by the plaintiffs to the Inland Revenue Department.

In the present case, the plaintiffs sought, *inter alia*, to recover this sum from the defendants. The defendants also made a counterclaim. The plaintiffs asserted that under section 107A of the Malaysian Income Tax Act, they are obliged to pay to the Inland Revenue Department 20% of all payments made to any non-resident and that it was only when the latter certified the defendants as non-resident that the plaintiffs were obliged to pay.